

Sumter City-County Board of Zoning Appeals

May 9, 2012

BOA-12-12, 2250 Peach Orchard Rd. (County)

The applicant is requesting Special Exception approval for an Electronic Gaming Establishment as required per Article 3, Section 3.i.4.j Electronic Gaming Establishments (SIC 7999), Article 3, Exhibit 5 and Article 5, Section 5.b.3.k. Special Design Review Criteria. The property is located at 2250 Peach Orchard Rd. and is represented by Tax Map # 133-02-02-004. These businesses are often called Internet cafes, cybercafés, or sweepstakes parlors and include sweepstakes promotions using simulated gambling devices.



Appeals - Variance - Special Exception

Sumter City-County Board of Appeals

May 9, 2012

BOA-12-12, 2250 Peach Orchard Rd. (County)

I. THE REQUEST

Applicant: Charles Ward

Status of the Applicant: Business Operator

Request: Special Exception approval for an Electronic Gaming Establishment (SIC 7999). These businesses are often called Internet cafes, cybercafés, or sweepstakes parlors and include sweepstakes promotions using simulated gambling devices.

Location: 2250 Peach Orchard Rd.

Present Use/Zoning: Unoccupied Former Restaurant/General Commercial (GC)

Tax Map Reference: 133-02-02-004

II. BACKGROUND

The applicant, is requesting special exception approval to open an Electronic Gaming Establishment (SIC 7999) with 68 sweepstakes terminals at 2250 Peach Orchard Rd. in Sumter County, shown in the photograph to the right.

Electronic gaming operations are defined as, *“Any business enterprise, whether as a principal use or an accessory use, where persons use electronic machines, including but not limited to computers and gaming terminals, to conduct games of chance, actual or simulated, including sweepstakes, and where cash, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined results. This term includes, but is not limited to*



internet cafes, internet sweepstakes, cybercafés, sweepstakes promotions, or sweepstakes parlors. This does not include any lottery approved by the State of South Carolina.”

Currently, the subject property is the site of a vacant former restaurant. Based on Business License records, the facility has not been in operation since January, 2009. The site is non-conforming with respect to parking lot construction, landscaping and buffering. The existing parking lot is paved however it does not have concrete curb and gutter.

According to the Official Zoning Map for Sumter County, the property is zoned as General Commercial (GC). The purpose of the GC zoning district is to accommodate the broadest possible range of commercial uses, determined principally by market conditions, while protecting adjacent property owners from potentially objectionable uses.

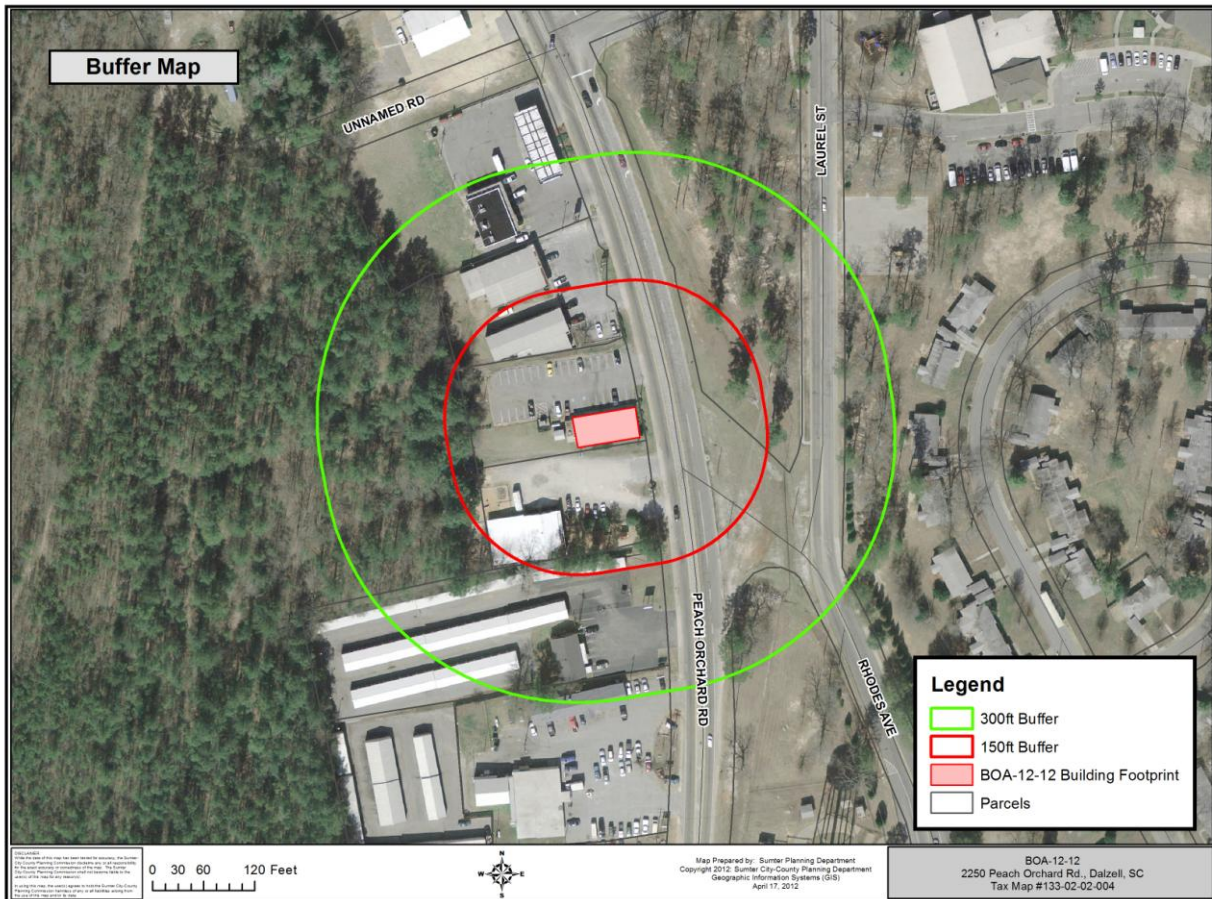
Under the GC district, Electronic Gaming Establishments (SIC 7999) are considered a Special Exception which requires the review and approval of the Sumter Board of Appeals. In particular, special exceptions for electronic gaming establishments are to be evaluated in accordance with Article 1, Section 1.h.4.c and Article 3, Section 3.i.4.j and in accordance with Article 5, Section 5.b.3.k of the Sumter County – Zoning & Development Standards Ordinance.

Article 5 Section 5.b.3.k Electronic Gaming Establishments:

- 1. The use shall not be located within 300 ft., measured from structure to structure, from any church or school; and shall not be located within 150 ft. from a park, liquor store or bar; and shall not be located within 150 ft. from any other Electronic Gaming/sweepstakes establishment.*
- 2. Hours of operation shall be limited in the following manner:*
 - a. Monday to Friday – 9:00 a.m. to 2:00 a.m.*
 - b. Saturday – 9:00 a.m. to 12:00 a.m.*
 - c. Sunday – Prohibited*
- 3. Parking required: 1 space per 2 sweepstakes terminals and 1 employee space*
- 4. The minimum number of terminals per establishment: 20
The maximum number of terminals per establishment: 75*
- 5. No one under 18 years of age permitted*
- 6. No alcohol shall be consumed, served or available for purchase on premises*
- 7. A primary use is a sweepstakes establishment with 20 or more machines. A primary use must meet all of the requirements of this section. Machines shall not be permitted as an accessory use.*

The following can be determined based on 5.b.3.k:

- As shown in the buffer map below, staff concludes the proposed location meets the Ordinance separation requirement of 300 ft. from structure to structure of a church or school and the 150 ft. separation requirement from a park, liquor store or bar. Additionally, this location is not within 150 ft. of any other proposed Electronic Gaming/Sweepstakes establishment.



- As shown in the graphic below, the total number of existing on-site parking spaces is 35. Based on this available number of parking spaces, the facility meets the requirements to accommodate up to 68 sweepstakes terminals. Additionally, the applicant will install a minimum 6 ft. tall privacy fence on the southern property line to buffer between this location and the adjacent outdoor play yard for the adjacent child care facility.



Article 1, Section 1.h.4.c Special Exceptions:

1. *Special exceptions are subject to the terms and conditions for the use set forth for such uses in the Zoning Ordinance.*
2. *Permits for Special Exceptions shall be evaluated by the Board of Zoning Appeals on the basis of the following criteria:*
 - a. *That the Special Exception complies with all applicable development standards contained elsewhere in this Ordinance, including landscaping and bufferyards, off-street parking, and dimensional requirements;*

- b. *That the special exception will be in substantial harmony with the area in which it is located;*
- c. *That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.*

The following can be determined based on 1.h.4.c.2:

1. Overall, the site does not comply with the bufferyards and landscaping requirements contained in the County Zoning Ordinance.

Notwithstanding the previous, the property was developed under the pre-1999 County standards with different regulations for parking lots and bufferyards. The site has been vacant for more than 36 months and is subject to discontinuance as defined in Article 6. As a result, parking lot construction, the landscaping and bufferyards are no longer considered to be legal non-conforming features. Site upgrades will be tied to cost of investment in the structure—it is not anticipated that investment in the structure will exceed the 25% of the assessed value of the structure, therefore no additional site changes will be required.

2. Staff finds that the proposed Special Exception request is in substantial harmony with the surrounding area based on the following conclusions:
 - a. The proposed special exception is not within 300 ft. of a church or school. Nor is it within 150 ft. of a park, liquor store or bar. Additionally, this location is not within 150 ft. of any other proposed Electronic Gaming/Sweepstakes establishment.
 - b. It has been shown that the proposed location meets all the specific separation criteria outlined in the Ordinance as well as the additional development standards stipulated for the proposed number of sweepstakes terminals. Additionally, the applicants will install a minimum 6 ft. privacy fence along the southern parcel boundary to buffer from the adjacent child care facility.
3. Staff finds that the proposed Special Exception request will not discourage or negate the use of surrounding property for use(s) permitted by right based on the following conclusions:
 - a. The stated purpose of the district is to “accommodate the broadest possible range of commercial uses.” It should be noted that GC does permit an array of residential uses. It is presumed these uses are, or can be, compatible with general commercial uses through appropriate site development standards. It is also inferred from the Special Exception criteria found in 5.b.3.k, that Electronic Gaming Establishments have not been considered to be incompatible with residential uses as noted by the absence of a residential separation requirement as part of the Special Exception review criteria.

III. STAFF RECOMMENDATION

Staff recommends approval of BOA-12-12. The proposed site meets applicable standards.

IV. DRAFT MOTIONS for BOA-12-12

- A. I move that the Sumter Board of Appeals approve BOA-12-12, subject to the findings of fact and conclusions contained in draft order, dated May 9, 2012 attached as Exhibit 1.
- B. I move that the Sumter Board of Appeals enter an alternative motion for BOA-12-12.

V. ZONING BOARD OF APPEALS – MAY 9, 2012

The Sumter City-County Board of Appeals at its meeting on Wednesday, May 9, 2012, voted to deny this request based on the following conclusions and as indicated on exhibit 1.

- a. The proposed use is adjacent to an established child care center.
- b. The proposed use is adjacent to Shaw A.F.B.
- c. The proposed use is not in substantial harmony with the surrounding area. It is not the proper location for such use.

Exhibit 1

Order on Special Exception and Application

Sumter Board of Appeals

BOA-12-12, 2250 Peach Orchard Rd., Sumter, SC
May 9, 2012

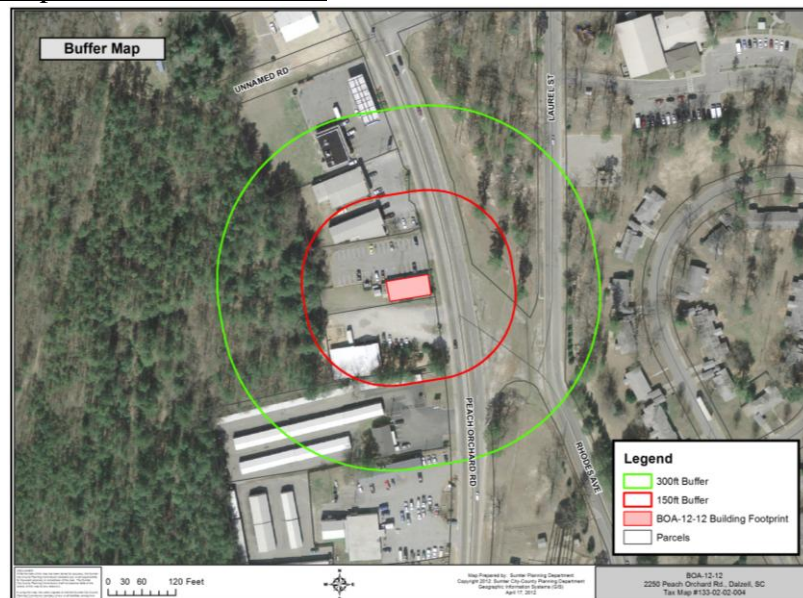
Date Filed: May 9, 2012

Permit Case No. BOA-12-12

The Board of Zoning Appeals held a public hearing on Wednesday, May 9, 2012 to consider the request of Charles Ward, the Applicant for a special exception which may be permitted by the Board pursuant to Sections 1.h.4.c, 3.i.4.j, and 5.b.3.k of the Sumter County Zoning & Development Standards Ordinance as set forth on Form 4 for the property described on Form 1 to be used for: an Internet Café with Sweepstakes (SIC Code 7999).

After the consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions.

1. The Board concludes that the standards in Sections 5.b.3.k of the Sumter County Zoning & Development Standards Ordinance which are applicable to the proposed special exception of the Zoning Ordinance ☒ **have** - ☐ **have not** been met based on the following findings of fact:
 - a. As shown in the buffer map below, the proposed special exception is not within 300 ft. of a church or school. Nor is it within 150 ft. of a park, liquor store or bar. Additionally, this location is not within 150 ft. of any other proposed Electronic Gaming/Sweepstakes establishment.



- b. The location meets all the specific separation criteria outlined in the Ordinance as well as the following: Hours of operation shall be limited to Monday-Friday – 9:00 a.m. to 2:00 a.m.; Saturday – 9:00 a.m. to 12:00 a.m.; Sunday – No operation. Number of terminals: 68; Number of on-site parking spaces: 35; No one under 18 years of age will be admitted; No alcohol will be consumed, served or available for purchase on premises.
2. The Board concludes that the special exception ☒ **does** - ☐ **does not** comply with all applicable development standards contained elsewhere in the Sumter County Zoning Ordinance, including landscaping and bufferyards, off-street parking, and dimensional requirements based on the following findings of fact:
 - a. Although the site has been subject to a 36 month discontinuance as defined in Article 6, the anticipated investment in the structure to commence operations is projected to be less than 25% of the assessed value of the structure. Therefore, the site is not required to conform to all applicable development standards of the current Sumter County – Zoning & Development Standards Ordinance.
3. The Board concludes that the proposed special exception ☐ **will** - ☒ **will not** be in substantial harmony with the area in which it is located based on the following findings of fact:
 - d. The proposed use is adjacent to an established child care center.
 - e. The proposed use is adjacent to Shaw A.F.B.
 - f. The proposed use is not in substantial harmony with the surrounding area. It is not the proper location for such use.

THE BOARD, THEREFORE, ORDERS that the special exception is ☒ **DENIED** – ☐ **GRANTED**

Approved by the Board by majority vote.

Date issued: _____

Chairman

Date mailed to parties in interest: _____

Secretary

Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.